error could not be harmless. App. 16a–17a. This superficial analysis fails to apply either the law governing harmless error or the facts of this case, and indeed, creates another circuit conflict.

The harmless error doctrine prohibits courts from granting relief due to errors that do not affect substantial rights. *See United States v. Gochis*, 256 F.3d 739, 742-43 (7th Cir. 2001) (holding that a magistrate's failure to advise defendant of right to trial by district court judge was harmless error) (citing *Peguero v. United States*, 526 U.S. 23, 29 (1999)). In *Gochis*, the Court explained that the harmless error doctrine is "as binding as any statute" and that federal courts are not free to disregard it in the context of referrals to magistrates. *Id.* at 742 (citing *Bank of Nova Scotia v. United States*, 487 U.S. 250, 255 (1988). Moreover, other circuits have held that referrals to magistrates are not jurisdictional at all. *See, e.g., Clark v. Poulton*, 963 F.2d at 1367 ("We thus agree with those circuit court cases which have considered the issue and held that a magistrate judge's lack of statutory authority is not a jurisdictional defect") (citations omitted); *United States v. Wey*, 895 F.2d 429, 431 (7th Cir.), *cert denied*, 497 U.S. 1029 (1990) ("We do not have a 'jurisdictional' problem . . . . We have at most a mistaken interpretation of a law designating which judicial officer shall preside over which proceedings.").

As explained above and in Beazer's Petition, Mead's substantial rights were not adversely affected by the referral in this case. Mead was entitled to, and received, full consideration by the District Court. The cases relied upon by Mead are easily distinguishable. *United States v. Ruiz-Rodriguez*, 277 F.3d 1281 (11th Cir. 2002), involved the evidentiary portion of a sentencing hearing. *Olympia Hotels Corp.* and *Thomas v. Whitworth*, 136 F.3d 756 (11th Cir. 1998), involved jury selection. In each of these cases, the

magistrate usurped the role of the district judge and review was inherently impossible. *See Gomez*, 490 U.S. at 876 (magistrate's conduct of voir dire "without any meaningful review by a district judge" was not harmless). In stark contrast, this case involved an equitable allocation based largely on a paper record, with limited testimony, none of which involved credibility determinations. The District Court did not abdicate its role, but instead, used the Magistrate to make its own decision more informed. The District Court performed a meaningful *de novo* review that cured any alleged error regarding the scope of the assignment.

CONCLUSION

For the foregoing reasons, as well as those previously articulated by Beazer in its Petition, Beazer's Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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